

Attorneys for Defendant Philip
Morris, Inc. in both California
and Massachusetts matter and
the Witness
200 Park Avenue
New York, New York

BY: ALAN B. HOWARD, ESQ.
ADAM J. SCHLATNER, ESQ.

GOODWIN, PROCTER & HOAR, LLP
Attorneys for Defendant Philip
Morris, Inc. in the
Massachusetts matter
Exchange Place - 19th Floor
Boston, Massachusetts 02109-2882
BY: MICHAEL K. MURRAY, ESQ.

ALSO PRESENT:

JOHN O'SULLIVAN - Videographer
Classic Reporting, Inc.

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IT IS HEREBY STIPULATED AND AGREED by
and among the attorneys for the respective parties
herein that the sealing, filing and certification
of the within deposition be waived; that such
deposition may be signed and sworn to before any
officer authorized to administer an oath, with the
same force and effect as if signed and sworn to
before a judge of this court.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form, are
reserved to the time of the trial.

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Levy
THE VIDEOGRAPHER: We are on the
record.

My name is John O'Sullivan. I
will be the videographer for today,
June 23, 1998. The time now is 4:22
P.M.

The court reporter for today is

9 Arta Pascullo. We are both from
10 Classic Reporting, Inc. located at 13
11 West 36th Street, New York City.
12 We are here at the offices of
13 Winston & Strawn, located at 200 Park
14 Avenue in New York City for the
15 videotape deposition of Carolyn J.
16 Levy.
17 The case numbers for this matter
18 are 980864 for the California matter,
19 95-7378-J for the Massachusetts matter.
20 Will counsel introduce themselves
21 for the record, starting with counsel
22 for the plaintiffs.
23 MR. GORE: Good afternoon, my
24 name is Pierce Gore, I'm with the law
25 firm of Lieff, Cabraser, Heimann &
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1 Levy
2 Bernstein in San Francisco. We
3 represent the plaintiffs, State of
4 California and Commonwealth of
5 Massachusetts.
6 MR. HOWARD: Alan Howard of
7 Winston & Strawn, representing the
8 witness, Ms. Levy, as well as Philip
9 Morris, defendant, in this case.
10 MR. MURRAY: My name is Mike
11 Murray, representing Philip Morris in
12 the Massachusetts action.
13 EXAMINATION BY MR. GORE:
14 Q. Can you state your full name for
15 the record?
16 A. Carolyn J. Levy.
17 Q. Good afternoon, Ms. Levy. Thank
18 you for making time in your schedule for us
19 this afternoon.
20 Have you had your deposition
21 taken before?
22 A. Yes.
23 Q. On how many occasions?
24 A. Three.
25 Q. And in what cases or actions were
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1 Levy
2 those depositions taken?
3 A. The first deposition was the
4 State of Texas, State of Florida and the Arch
5 case.
6 The second deposition was in the
7 Lawrence case.
8 Q. Was that the Florida deposition?
9 A. No. The Lawrence case is a
10 securities case.
11 And the third deposition was for
12 Engle.
13 Q. Let's make sure I have this
14 correct. The first deposition of yours that
15 was taken was in the Arch case; is that
16 correct?
17 A. It was for three different cases

18 at the same time. Texas, Florida and Arch.
19 Q. That was in 1997?
20 A. May of 1997.
21 Q. And you testified on behalf of
22 Philip Morris?
23 A. Yes.
24 Q. And the second deposition, the
25 Lawrence case, when was that?

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1 Levy
2 A. That was in April of this year,
3 1998.
4 Q. What did that case involve?
5 A. It's a securities case regarding
6 essentially the events surrounding what we
7 call, Marlboro Friday.
8 Q. In that deposition, you testified
9 on behalf of Philip Morris?
10 A. Yes.
11 Q. The third deposition, the Engle
12 case, when was that deposition taken?
13 A. That was very recently. Within
14 the past few weeks.
15 Q. What does that case involve?
16 A. That is a class action case in
17 the State of Florida.
18 Q. Is it a smoking case -- a case
19 involving smoking and allegations against
20 Philip Morris?
21 A. I believe it's a case involving
22 people who have -- who believe they have
23 smoking related illness. I think that is the
24 class.
25 Q. It is not a securities case?

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1 Levy
2 A. No.
3 Q. I'm sure your counsel has
4 explained to you, but I'll go over it very
5 quickly. Just a few of the basic ground rules
6 for a deposition. You are probably very
7 familiar with them by now.
8 You have taken an oath to answer
9 my questions as truthfully and completely as
10 you can to the best of your ability. If I
11 state a question that you don't understand, if
12 you need it restated in any way, just let me
13 know, and I'll do so.
14 Do you understand that?
15 A. Yes.
16 Q. If you need to take a break at
17 any time, just let me know. We will be happy
18 to take a break.
19 Your counsel may object from time
20 to time, for the record, to my questions. But
21 unless he instructs you not to answer the
22 question, then you have a duty to go ahead and
23 answer it.
24 Do you understand that?
25 A. Yes.

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1 Levy
2 Q. I'm going to show you a couple of
3 deposition notices which we are going to have
4 marked as Exhibits 1 and 2.
5 MR. GORE: Exhibit 1 will be the
6 notice in the California action.
7 Exhibit 2 will be the notice in
8 the Massachusetts action.
9 (Document entitled "Notice of
10 Deposition of Philip Morris,
11 Inc." in Superior Court of the
12 State of California marked Levy
13 Exhibit 1 for identification, as
14 of this date.)
15
16 (Document entitled "Notice of
17 Deposition of Philip Morris,
18 Inc." in the Commonwealth of
19 Massachusetts marked Levy Exhibit
20 2 for identification, as of this
21 date.)
22 Q. These notices were served by the
23 plaintiffs and requested that Philip Morris
24 produce the person most knowledgeable on a
25 variety of topics identified in the notices.
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1 Levy
2 Have you ever seen these two
3 documents before?
4 A. Yes.
5 Q. When did you first see them?
6 A. I saw one or the other of these,
7 I think it was the Massachusetts one, when I
8 was meeting with counsel several weeks ago to
9 prepare for this deposition.
10 Q. Do you understand that you are
11 the person who has been designated by Philip
12 Morris, as the person most knowledgeable,
13 regarding -- it's my understanding, marketing
14 research, which is topic No. 9 in the
15 California notice and topic -- also topic No.
16 9 in the Massachusetts notice?
17 A. Yes.
18 Q. Is that correct? Are you the
19 person most knowledgeable at Philip Morris to
20 answer questions regarding the topic of
21 marketing research?
22 A. I believe so.
23 Q. Other than discussions with your
24 counsel, have you discussed this deposition or
25 your preparation for this deposition with
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1 Levy
2 anyone else?
3 A. No.
4 Q. Have you reviewed any documents
5 in order to prepare for this deposition?
6 MR. HOWARD: Again, I caution you
7 to exclude from that answer, if you are
8 going to identify any documents, the

9 documents shown to you by counsel.
10 A. No.
11 Q. Have you done anything else by
12 way of preparation for today's deposition?
13 A. I met with counsel -- it's hard
14 to make the distinction between preparation
15 for this deposition and preparation for the
16 Engle deposition, which I forget exactly when
17 it was, but it was recently.
18 I think it would be fair to say
19 that I met on a couple of occasions with
20 counsel to prepare for this.
21 Q. To prepare for this deposition,
22 did you review the transcripts of the
23 testimony that you gave in prior depositions?
24 A. No, I did not.
25 Q. Have you discussed this
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1 Levy
2 deposition or your preparation for it with
3 anyone at Philip Morris?
4 MR. HOWARD: Exclude from that
5 counsel for Philip Morris.
6 MR. GORE: Excluding in-house
7 Philip Morris counsel.
8 A. The only discussion was a
9 statement of the timing of coming over here.
10 Q. Who informed you that you were
11 going to be designated on behalf of Philip
12 Morris to testify regarding the subject of
13 marketing research?
14 A. I think it was Alan Howard.
15 Q. Where are you currently employed?
16 A. I work for Philip Morris.
17 Q. What is your business address?
18 A. 120 Park Avenue, New York, New
19 York 10017.
20 Q. What is your title there?
21 A. I'm senior vice president for
22 Youth Smoking Prevention.
23 Q. For purposes of your deposition,
24 will you understand what I mean if I refer to
25 that division as YSP?
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1 Levy
2 A. Yes.
3 Q. How long have you held that
4 position?
5 A. Since the end of April.
6 Q. In what city do you live?
7 A. In [DELETE].
8 Q. How long have you been with
9 Philip Morris?
10 A. It will be 23 years in September.
11 Q. Mr. Mikulay is celebrating his
12 23rd anniversary today, did you know that?
13 A. I knew it was the summer. I
14 didn't know it was today.
15 Q. What position did you hold prior
16 to becoming senior VP of YSP at the end of
17 April?

18 A. I was the senior vice president
19 of marketing and sales information.
20 Q. And for what period of time did
21 you hold that position?
22 A. From December of 1994 until April
23 of this year.
24 Q. Can you describe for me generally
25 what your duties were as senior VP of
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1 Levy
2 marketing and sales information?
3 A. The marketing and sales
4 information department is really a marketing
5 research department. If that helps to put it
6 in perspective. Our responsibilities were to
7 support the information needs of the marketing
8 department of the sales department and of
9 executive management.
10 What that involved was, consumer
11 research to support basically brand marketing
12 both in terms of new products, existing
13 products and promotional programs to also
14 provide both consumer and retailer information
15 to the sales organization to help them develop
16 sales programs and to track our business
17 performance for all three of our
18 constituencies, market, sales and executive
19 management.
20 And also provide forecast for
21 budgeting, planning and production planning
22 purposes.
23 Q. What position did you hold prior
24 to becoming senior VP of marketing and sales
25 information?
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2 A. I was the vice president of
3 planning.
4 Q. And over what time period did you
5 hold that position?
6 A. I was in the planning -- I was in
7 charge of the planning department. Maybe that
8 is an easier way to answer the question. From
9 August of '91 until December of '94.
10 I started in planning as director
11 of planning and was promoted to VP at some
12 point. I've forgotten the exact date. My
13 responsibilities did not change dramatically
14 with that change in title.
15 Q. And could you describe generally
16 what your duties were as first director then,
17 vice president of the planning department?
18 A. Our responsibilities were to
19 provide essentially staff support for the
20 office of the president. And we also
21 coordinated the preparation of the five-year
22 plan for Philip Morris U.S.A.
23 Q. When you say you coordinated the
24 plan, does that mean that you prepared the
25 five-year plan?
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1 Levy

2 A. When I say coordinate the
3 preparation, I used that term to reflect the
4 fact that it really is very much of an
5 interdepartmental effort with finance, market
6 research, the planning department and each of
7 the other organizations within Philip Morris
8 U.S.A., like marketing and sales and
9 operations.

10 So our job was really to pull the
11 plan together and provide the materials to
12 corporate, like speeches and finished
13 documents that they would then use for their
14 purposes.

15 Q. Is Philip Morris presently
16 operating under a particular five-year plan?

17 A. We have a five-year plan -- yes,
18 we have a five-year plan. It would be called
19 the '98 to 2002 five-year plan.

20 Q. This is a five-year plan that you
21 started operating under as of January 1, 1998?

22 A. That's right.

23 Q. What position did you hold prior
24 to becoming director of the planning
25 department in August of 1991?

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1 Levy

2 A. I was the director of consumer
3 research, which was in the market research
4 department.

5 Q. How long did you hold that
6 position or were you in a similar position, I
7 don't know if there was a promotion along the
8 way?

9 A. There was. Again, it was one of
10 these -- really a title change along the way.
11 I was in charge of the consumer research area
12 from -- I'm going to say February, it may have
13 been March or January, I'm foggy on the exact
14 month, of '96. Okay?

15 MR. HOWARD: '96 or '86.

16 A. Sorry. '86. Let's call it
17 February of '86 to August of '91.

18 Q. Can you describe for me
19 generally, what you did as part of your duties
20 in the positions that you held in the consumer
21 research department from February of 1986
22 through August of 1991?

23 A. The consumer research group was
24 essentially one of two parts of the market
25 research department and the consumer research
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2 group was responsible for supporting the
3 marketing -- the brand marketing people, very
4 much according to the kind of duties that the
5 group had as I described for marketing, sales
6 information in terms of existing product
7 positions and advertising new product, brand
8 promotion, development, and we also were

9 responsible for the consumer tracking study.
10 Which I think now we call the continuous
11 tracking study, but same basic study.

12 Q. What is the consumer or
13 continuous tracking study?

14 A. It's a telephone study that we
15 have commissioned different market research
16 suppliers over the years to conduct for us.

17 The essence of the study is, we
18 phone adult smokers throughout the 48 United
19 States and ask them questions about their
20 brand preferences, their buying behavior.

21 We get information about things
22 like promotions they may have seen or
23 bought, and basically that kind of
24 information. It's an ongoing study.

25 Q. Is it done by -- in-house by
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1 Levy
2 Philip Morris employees or is it outsourced to
3 suppliers, other independent organizations?

4 A. We outsource it to market
5 research suppliers who have what is called
6 CATI capability. It's Computer Assisted
7 Telephone Interviewing capability.

8 Q. Do you know the names of any of
9 these suppliers?

10 A. The study at the moment is
11 conducted by two suppliers. One is which
12 Winona Research. The other one is Marketing
13 Research Services, Inc.

14 Q. When you say the two current
15 programs, over what time span are these two
16 current programs being conducted?

17 A. Okay. If I use the word
18 "program," that is not a good -- these are
19 suppliers. These two suppliers have been
20 involved in collecting continuous tracking
21 data, I believe, since 1988.

22 Q. Is consumer tracking and the
23 accumulation of consumer tracking data, is
24 that an activity that has been ongoing by or
25 on behalf of Philip Morris for many years?

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2 A. It is. We changed to a
3 continuous study. Again, I use '88 because I
4 believe that is when we modified our data
5 collection methodology to a continuous study.
6 I believe it was in 1988. But we had done
7 similar kinds of studies I believe since 1980
8 or since 1981.

9 Q. Were you involved in the decision
10 to convert to a continuous study in 1988?

11 A. I was in charge of the department
12 and it was my recommendation that we do that.
13 People that worked for me also were involved
14 in that decision as well as the person that I
15 worked for.

16 Q. Who did you work for at that
17 time?

18 A. The director of market research
19 at that time was Jon Zoler.
20 Q. Why was the decision made? What
21 was the reasons for the decision for
22 continuous research?
23 A. We had previously been doing the
24 study twice a year in what I would call like
25 waves. We would do a wave in the spring and
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1 Levy
2 we would do a wave in the fall. And it was a
3 very hectic activity to collect a lot of
4 interviews in a short period of time.
5 And part of our rationale, as I
6 recall, was to kind of even out the data
7 collection. We were also interested in not
8 having gaps in our information.
9 And with the ability to get
10 better data processing, in terms of computers
11 really becoming more commonplace, it was going
12 to be possible to do more with the data if
13 they were made available on a continuous
14 basis.
15 Q. You testified that the continuous
16 track -- is the right term, "continuous
17 tracking study"?
18 A. I think that is the correct term
19 today. We used to call it consumer tracking.
20 I believe the correct term today would be
21 continuous tracking study.
22 Q. And they are done via telephone
23 interviews?
24 A. That's correct.
25 Q. What kind of information is
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2 solicited during these telephone interviews?
3 A. As I mentioned earlier, the
4 substance of the interview is -- first of all,
5 adult smokers who are then asked questions
6 about the regular brand. And the length of
7 time that they have been smoking the regular
8 brand. If they had a previous brand.
9 We also asked them about what
10 they have purchased in the past week. We
11 asked them whether they buy by the pack or
12 carton. We asked them in what kind of store
13 do they buy their cigarettes.
14 There are a number of types of
15 questions that might or might not be asked
16 depending on -- we have -- what we call
17 modules which either get plugged in or
18 unplugged in a survey. And a module might
19 involve, for example, when we first started
20 Marlboro Adventure Team, we might ask whether
21 they were saving miles.
22 We also asked -- some of the
23 interviews conducted by one of the suppliers,
24 and I think it's Winona, also asked questions
25 about brand image and promotion awareness and
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1 Levy
2 advertising awareness.
3 Q. Do the telephone callers ask
4 questions about the number of smokers in the
5 household being called?
6 A. What we do to determine whom
7 should be interviewed is we, first of all, get
8 an adult from the household on the phone. And
9 we ask that adult, if there are adult smokers
10 who live in the household.
11 And if they say yes, then we ask
12 them to tell us the ages of the men who smoke
13 in the household and the ages of the women in
14 the household who smoke.
15 And historically, and we continue
16 to this day, our method is to go for the
17 youngest male who is at home. So the idea was
18 you select the youngest male adult smoker in
19 the household who's home at the time. The
20 rationale being that men are harder to get on
21 the phone, to find at home, than women. And
22 younger adult men are harder to get on the
23 phone and find at home than older ones. We
24 try to go to the hardest to find first if they
25 are there.

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1 Levy
2 The only quota that we have in
3 the study is gender. And we have, I believe
4 at this time, 51 percent of our interviews are
5 with men and 49 percent of our interviews are
6 with women.
7 Q. How do you determine in the first
8 place before the call is placed, which
9 households will be called?
10 A. It's a random digit dialing
11 procedure.
12 Q. Similar to what I would get if I
13 picked up the telephone directory and just
14 selected numbers to call?
15 A. Well, the directory is not really
16 random, because those are listed numbers. So
17 we use -- there are various samples that you
18 can buy of random numbers. I can't tell you
19 for sure which these folks buy, but it
20 includes, to the best of my recall, it
21 includes listed and unlisted numbers.
22 Q. That is interesting to know.
23 Are the people who are called
24 asked questions about -- strike that. Let me
25 go back for a moment.

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1 Levy
2 You testified that the person who
3 you want to talk to the most is the youngest
4 male smoker in the household; is that correct?
5 MR. HOWARD: Objection to the
6 form of the question.
7 You can answer.
8 A. Our desire is to get a fair

9 representation of adult smokers in the 48
10 United States. Because of the difficulty of
11 being able to find male -- younger adult male
12 smokers at home and have them be willing to be
13 interviewed, the procedure that we use is, we
14 choose to interview first the youngest adult
15 male smoker who is home at the time.

16 But our desire in terms of who we
17 want to interview is we want a fair
18 representation of all adult smokers in the 48
19 United States.

20 Q. And by adult smokers, you mean
21 age 18 and older?

22 A. In Alabama and Utah, the legal
23 minimum age is 19. So in those two states, we
24 do not interview anyone under the age of 19.

25 In all other of the 48 states, we
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2 interview adult smokers aged 18 plus.

3 Q. Are the -- what is the name for
4 the person who is on the other end of the
5 phone when you make -- when one of these calls
6 is made, what shall we call that person?

7 A. The person that is being asked
8 the question or the person asking the
9 question?

10 Q. The interviewee.

11 A. We can call them the respondents.

12 Q. Are the respondents asked
13 questions about the ethnicity about the
14 smokers in the household?

15 A. What you might call the screening
16 stage. At the stage when we are trying to
17 find out the gender and ages of who is an
18 adult smoker in the household, ethnicities is
19 not asked.

20 Once we have completed an
21 interview with an adult smoker, we have some
22 classification questions that are asked and
23 ethnicity is one of the classifications
24 questions that we ask.

25 Q. Are there also questions about
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1 Levy
2 income and education level?

3 A. We ask for education information
4 and income information. The income
5 information that we get is fairly general
6 because most people are reluctant to give
7 income information over the phone.

8 But we try to get above and below
9 \$35,000 a year and if they answer that
10 question, we will attempt to get a little
11 finer than that.

12 Q. What is the rough ballpark off
13 the top of your head breakdown between over
14 and under 35,000, what do you typically get?

15 A. Off the top of my head, I'm at a
16 blank. It's household income, I can say that
17 to you. I couldn't even venture a guess.

18 Q. Are the respondents asked
19 about -- they are asked about the ages and the
20 genders of the adult smokers in the household;
21 is that correct?
22 A. That's correct.
23 Q. What is done with the information
24 if a respondent states or volunteers that, my
25 son or daughter who is a teenager, by teenager
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1 Levy
2 I mean someone who is not yet 18, smokes X
3 brand, does that information become part of
4 the record of the telephone interview?
5 A. No, it doesn't. And the other
6 thing that I would say -- that is an
7 interesting question -- I would say that I
8 have listened to a lot of these interviews for
9 quality control purposes, I have never heard a
10 respondent give us any information, because
11 we -- well, we make it very clear that we are
12 only interested in the adult, over the age of
13 18 or over the age of 19 in Alabama and Utah.
14 We make it clear that those are
15 the only people we are interested in
16 interviewing. I have never heard that
17 response. It's not part of the record. If it
18 were to happen, I don't even know if we have a
19 way to record it.
20 Q. Where and by whom are the records
21 of these telephone interviews maintained?
22 A. The individual market research
23 suppliers, as I mentioned, do the data
24 collection.
25 I believe that all of the data
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2 processing, meaning any sort of cleaning or
3 combination of the interviews from the two
4 different suppliers, is done by Marketing
5 Research Services in Cincinnati, and they
6 maintain a data base of that information.
7 I'm pretty sure that we still
8 have a copy of that database that exists at
9 Philip Morris. And part, if not all, of that
10 database also exists in Pittsburgh at another
11 supplier of ours, Management Science
12 Associates.
13 Q. At any time prior to February of
14 1986, were you employed at Philip Morris in
15 the areas of consumer research or marketing
16 research?
17 A. It's a little difficult to
18 answer, but let me tell you the other job that
19 might fall into the consumer research area and
20 that is a job that I had in Richmond that
21 involved, blind product testing of Philip
22 Morris cigarettes and competitive cigarettes
23 by adult smokers in the United States.
24 Q. What job title was that?
25 A. I was the manager of the product
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1 Levy

2 evaluation division.

3 Q. And during what time period, did
4 you hold that position?

5 A. I held that job from I think it
6 was spring, probably April of '84, until I
7 came to New York and did the consumer research
8 job. We said maybe February of '86.

9 Q. Other than the blind product test
10 that you've described, generally what were
11 your duties as manager of the product
12 evaluation division?

13 A. We were responsible for
14 supporting the product development activities.
15 The major tool that we used was the blind
16 product test amongst smokers on our panel.

17 We also had responsibility for
18 several employee panels that would smoke and
19 evaluate our cigarettes internal to Philip
20 Morris.

21 Q. To your knowledge, does Philip
22 Morris currently do blind product testing of
23 the type that was performed in Richmond while
24 you were the manager of product evaluation
25 division?

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2 A. The intent is the same. Some of
3 the methods have changed. It's very similar.

4 Q. Can you describe for me the
5 methods by which the blind product testing is
6 done?

7 A. The method typically used is what
8 is called the monadic test, which means that
9 an individual smoker receives one type of test
10 product in a plain white package to smoke and
11 evaluate.

12 In the past, we conducted what
13 were called either sequential monadic and
14 sometimes called paired comparison test where
15 each individual adult smoker got two different
16 types of cigarettes to smoke and evaluate.

17 Q. And compare them side by side?

18 A. And compare them side by side.

19 Q. Was the same methodology used for
20 the employed panel's that did the product
21 testing?

22 A. Generally -- I'm trying to
23 remember, it's been a long time.

24 I don't recall the employees
25 being asked to do paired evaluations or

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1 Levy

2 sequential monadic evaluations. As I recall,
3 they typically did monadic evaluations.

4 Q. Are these evaluations done, are
5 all of them done blind, plain white wrapper,
6 no product identification?

7 A. The majority are done blind
8 because the interest is in the product

9 subjectives, not what might be conveyed via
10 name or package design.
11 Q. Do Philip Morris employees prefer
12 Philip Morris products when they test them or
13 have you ever gotten a surprise in a blind
14 employee test?
15 A. I'm trying to think if we -- I
16 don't remember occasions where we gave
17 employees competitive products to smoke, so it
18 would be hard for me to answer that question.
19 MR. HOWARD: Is now an
20 appropriate time for brief break?
21 MR. GORE: That would be fine.
22 THE VIDEOGRAPHER: This is the
23 video operator. We are off the record.
24 The time is 5:00 P.M.
25 (Recess taken.)

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1 Levy
2 THE VIDEOGRAPHER: This is the
3 video operator. We are back on the
4 record. The time is 5:09.
5 Q. Ms. Levy, are you a smoker?
6 A. No.
7 Q. Have you ever smoked?
8 A. No.
9 Q. You have described a couple of
10 different types of product consumer tests and
11 evaluations.
12 You described that the actual
13 product comparisons conducted via the blind
14 product test and you have also described the
15 gathering of some consumer research via a
16 telephone interviews.
17 In the course of your career at
18 Philip Morris, have you participated in or
19 been responsible for other forms of other
20 consumer marketing research?
21 A. Yes. The work that I described
22 when I was talking about the duties -- the
23 marketing and sales information department.
24 I've been involved in a lot of
25 consumer research to support, as I mentioned,
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1 Levy
2 brand positioning, new product development,
3 understanding of competitive brands,
4 understanding and development of brand
5 promotion programs.
6 Q. Could you describe for me some of
7 the specific forms of research or research
8 programs that you conducted or were
9 responsible for in those areas?
10 A. We would -- as an example, we
11 would conduct individual interviews.
12 Qualitative research, which would be
13 individual interviews or focus group
14 interviews amongst adult smokers, in various
15 markets around the country to gather
16 information about their reactions to cigarette
17 names. If it was a new product, project or

18 their reaction to cigarette advertising or to
19 package designs, or to new product concepts.
20 So qualitative research to
21 basically get information that would allow us
22 to develop some hypothesis that could then be
23 tested with quantitative tests.
24 Qualitative typically is a small
25 number of interviews conducted with the goal
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1 Levy
2 of figuring out what are the right questions
3 to ask and to help you develop hypothesis.
4 Then we would move to larger
5 sample size, more geographically
6 representative. Quantitative studies that
7 would either affirm or negate the validity of
8 what we thought we were testing.
9 So essentially what you are
10 trying to do is gain confidence that an idea
11 is a good idea or gain confidence that a
12 package design of one description is better
13 than a package design of another description.
14 Q. Are there particular brands that
15 have been involved in the type of consumer
16 research that you are describing?
17 A. In terms of new products?
18 Q. Either new products or
19 established Philip Morris products.
20 A. The kind of research moving from
21 qualitative to quantitative that I'm
22 describing, we use that approach for Marlboro
23 Medium.
24 As an example, it's typical in
25 the new product area to follow a fairly set
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1 Levy
2 kind of process where you start with
3 qualitative, move to quantitative. And then
4 depending on what you are finding, if you have
5 a lot of confidence, you may go directly into
6 the market.
7 For example, with Marlboro
8 Medium, we did not have a test market. We
9 went national. With Marlboro Ultra Lights, we
10 had test markets for several years before we
11 finally went national just this past February.
12 Q. Is there any -- it sounds like
13 there is a lot of variation between the
14 testing time period depending on the
15 particular new product that is being
16 introduced?
17 A. If you are talking about the
18 length of time over which the testing might
19 span, it can vary a great deal, depending on
20 what you are learning.
21 And I think also depending on the
22 market conditions and how committed everyone
23 in the building is, to a particular product
24 launch.
25 Q. Are Marlboro Medium and Marlboro
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1 Levy
 2 Ultra Lights new products that were -- well,
 3 let me ask it this way:
 4 Do you know what year Marlboro
 5 Medium was introduced to the market?
 6 A. It was launched in the summer of
 7 1991.
 8 Q. Same question for Marlboro Ultra
 9 Lights?
 10 A. Marlboro Ultra Lights was
 11 launched nationally this past February.
 12 Q. February of '98?
 13 A. Yes. Nationally launched. The
 14 test markets, I don't remember what year those
 15 test markets were opened. If I had to guess,
 16 it would be '89 or '90. It might have been
 17 '91. I'm unclear relative to the Marlboro
 18 Medium launch what the timing was on the
 19 Marlboro Ultra Lights.
 20 Q. Can you recall the name and
 21 national market introduction of other new
 22 products that have been developed during your
 23 tenure at Philip Morris?
 24 A. National introduction?
 25 Q. Yes.

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1 Levy
 2 A. I think the first product that
 3 was launched, new product that Philip Morris
 4 launched after I joined the company was Merit.
 5 That was a national launch.
 6 Q. What year was that?
 7 A. I think it was '76, may have been
 8 '75. Either late '75 or very early in '76.
 9 Q. Any others that you can recall?
 10 A. National launch?
 11 Cambridge in its original
 12 packings. I don't remember the year.
 13 Merit Ultima was launched
 14 nationally.
 15 Q. In what year?
 16 A. Oh, I'm going to say I think it
 17 was '92. Early '90s. I think '92. We've
 18 repositioned Cambridge since then nationally
 19 as a discount brand.
 20 Q. What year did that occur?
 21 A. I'm going to say the mid to late
 22 '80s.

23 In terms of national launches,
 24 seems like we launched Benson & Hedges King
 25 Size national.

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1 Levy
 2 Q. What year was that?
 3 A. Again, I can't give you an exact
 4 year. Late '80s. Very early '90s.
 5 Q. In --
 6 A. I'm sorry. Also Basic was
 7 launched. The national -- Basic was in the
 8 market and then we had what I would call the

9 national launch to gain national distribution
10 up like above 80 percent of the stores. And
11 that was in I believe '92, that was done.

12 Q. When each of these new products
13 was going through both the qualitative and
14 quantitative consumer research studies, is
15 there an effort made at Philip Morris to
16 determine who the constituencies -- who the
17 customer base will be for a new brand that is
18 being introduced nationally?

19 A. Typically when the brand
20 organization is putting together their plan,
21 if you will, for a new product, they will talk
22 about what they believe will be their primary
23 audience. What they want their primary
24 audience to be.

25 And then as part of our research,
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1 Levy
2 we'll certainly look for the appeal of the
3 product concept or the product itself or the
4 entire marketing package, if you will.
5 Package, the name, the product, the
6 advertising, amongst various segments of the
7 smoking population.

8 Q. Is there ever -- has there ever
9 been during your tenure at Philip Morris, to
10 your knowledge, any consideration given to the
11 appeal of any Philip Morris brand to smokers
12 under the age of 18?

13 MR. HOWARD: Object to the form.
14 You can answer.

15 A. I think the best way to answer
16 that question is -- well, even to the this day
17 even with my new job, I have never been
18 associated with any research that involved
19 underage smokers, okay, and our policy is to
20 conduct research only amongst adult smokers
21 aged 18 plus or like I said in Alabama and
22 Utah, age 19 plus.

23 So I don't have any information,
24 never had any information about what was going
25 on with underage smokers vis-a-vis our brands.

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1 Levy
2 Q. Other than what you have already
3 testified about, are there any other
4 significant forms of consumer or marketing
5 research studies or information gathering that
6 you have participated in or been responsible
7 for?

8 A. On the side of market
9 information, there is a whole area that I have
10 not really talked to you about, in terms of
11 tracking our business.

12 Q. Okay. Tell me about that
13 generally.

14 A. Okay. When I was in charge of
15 the marketing and sales information group, as
16 I think I mentioned, one of our
17 responsibilities was tracking our business.

18 And we used a variety of data sources to do
19 that.
20 And taking it from the factory
21 out, if you will, the first database or the
22 data source that I can talk about, are
23 shipments. Our shipments to our direct
24 customers. And we would report on our
25 shipments to management on a daily basis. And
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1 Levy
2 on a weekly basis, we would report our share
3 of industry shipments.
4 Now, we were able to get industry
5 information from Management Science
6 Associates, the group in Pittsburgh that I
7 mentioned earlier. And what they do is
8 provide a service for the major cigarette
9 manufacturers, whereby each manufacturer sends
10 their shipment information to MSA in
11 Pittsburgh.

12 And they basically repackage the
13 information and ship it back, sell it back, if
14 you will, to each of the major manufacturers
15 on a weekly and monthly basis, so that weekly,
16 we would know what our share of industry
17 shipments was. And we would know what each of
18 our major competitors shipped.

19 Q. I think I may be able to save you
20 some time and trouble on this part of the
21 deposition because Mr. Mikulay testified at
22 length yesterday about three levels at which
23 your company's business is tracked.

24 The first being the one you've
25 just described, shipments to your direct
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1 Levy
2 customers?

3 A. Okay.

4 Q. The third was the end point,
5 retail sales to the actual consumers of Philip
6 Morris product.

7 Then there was also a mid-level
8 form of tracking I believe and that concerned
9 deliveries of Philip Morris products from
10 direct customers, and I would call them for
11 lack of a better -- there were many
12 categories, one of them was distributors, to
13 the retailers?

14 A. That's right.

15 Q. Are those the three categories
16 that you would have been involved with?

17 A. Yes.

18 Q. That then, we don't have to
19 cover?

20 A. Okay.

21 Q. We comprehensively dealt with
22 them yesterday.

23 Tell me about YSP.

24 A. Okay. The Youth Smoking
25 Prevention Department if you will, certainly
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1 Levy
2 my job, was created the end of April. I've
3 been charged with the responsibility, solely
4 with the responsibility of doing a few things.

5 I think probably the easiest way
6 to start is my objective overall is to try to
7 bring youth smoking incidents down.

8 And Philip Morris has been
9 involved in trying to prevent youth smoking
10 for, in essence, say, for over 20 years, with
11 adoption of the industry advertising code,
12 with the agreement to not advertise on
13 electronic media, to some of the more recent
14 things that we've done in the area of access
15 where we announced our Action Against Access
16 program in '95.

17 And the support of the We Card
18 program, which is a program supported by a
19 coalition of manufacturers and retailers that
20 involves signage retail.

21 About minimum age laws and also
22 involves training retailers and clerks who
23 work in retail establishment, how to ask for
24 ID. How to spot fake ID. And essentially how
25 to guard against making illegal sales to

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1 Levy
2 minors.

3 So the thrust up until the time
4 of my appointment, at the end of April, was
5 really we deemed it appropriate, given the
6 fact that we don't market to youth, we deemed
7 it appropriate to put our focus really on
8 the -- in early days of our advertising
9 practices and more recently on the issue of
10 access.

11 Unfortunately, since the early
12 '90s, according to the University of Michigan
13 monitoring the future study, smoking incidents
14 has been climbing. And --

15 Q. Smoking incidents among underage
16 smokers?

17 A. Well, it's not true they only
18 measure underage, but the data that I'm
19 referring to are data collected on 8th
20 graders, 10th graders and high school seniors.

21 Those groups, when combined,
22 essentially reflect 13 to 17-year-olds. And
23 smoking incidents amongst 13 to 17-year-olds
24 has been going up since the early '90s.

25 And that, coupled with what I
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1 Levy
2 believe is called -- we call it the look-back
3 provisions that were in the June 20th proposed
4 resolution, made it clear to us that we needed
5 to take an even more proactive role in trying
6 to address the issue of youth smoking. And
7 that culminated in the creation of my job and
8 the appointment of me to that job.

9 Q. What year was the We Card program
10 begun?

11 A. We Card is an evolution -- I'll
12 call it an evolution of an earlier program
13 that was called It's The Law. I can't tell
14 you what year We Card was invented. It was,
15 if not right around the time of our Action
16 Against Access, it was in about -- about that
17 time frame. So I'm going to say '94 or '95.
18 Before that, there was the program called It's
19 The Law.

20 Q. Is the We Card program a Philip
21 Morris program or industrywide program?

22 A. It's a program that is supported
23 by a coalition of retailers, retail
24 associations as well as the cigarette
25 manufacturers.

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1 Levy

2 Q. Same question with regard to It's
3 The Law program.

4 A. I don't remember. I don't
5 remember if I ever knew. I know we were
6 supporting It's The Law. I don't remember who
7 else was.

8 Q. Have you been told yet what the
9 budget for fiscal year 1995 for YSP is going
10 to be?

11 MR. HOWARD: Objection to form.
12 You can answer.

13 A. You don't mean '95.

14 Q. I'm sorry.

15 A. That is okay.

16 Q. Fiscal year 1998?

17 MR. HOWARD: I still object.
18 You can answer.

19 A. I'm in the process of trying to
20 put a budget together right now, so I don't
21 have an approved budget yet.

22 Q. Do you have anything like a
23 ballpark or magnitude estimate of what the
24 budget is going to be for a full fiscal year
25 for YSP?

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1 Levy

2 Have you been given information
3 as far as within certain parameters that you
4 should prepare a budget?

5 A. The short answer is no. Because
6 really what I've been asked to do is develop a
7 strategy and tactics. And once that is done,
8 then try to determine what is this going to
9 cost.

10 So, that given what I think is
11 reasonable and the people that are working for
12 me think is reasonable, then we will put
13 together a budget that goes through the normal
14 approval process.

15 Q. Have you been given any
16 information or come to any sort of conclusions
17 as far as the number of people who will be in

18 the YSP department?
19 A. I'm again in the stage of putting
20 a recommendation together, my first cut at the
21 department and I can tell you that, my first
22 cut, but my expectation is that as we gain
23 knowledge and have a better understanding of
24 how we can contribute to this effort and what
25 is appropriate, it's possible that the group
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1 Levy
2 will grow.
3 Near term, I am anticipating that
4 basically about eight professionals in
5 addition to myself and two administrative
6 support people in addition to my secretary.
7 That is where we will try to start.
8 Q. Do you know whether the other
9 tobacco companies are considering or forming a
10 departments similar to YSP?
11 A. I have joined an industry task
12 force that was formed -- well, the first
13 meeting was almost coincident with my
14 appointment of the other tobacco companies and
15 also United States Tobacco, for the purpose of
16 determining what we as an industry could do to
17 address youth smoking.
18 And based on the representation
19 of that industry task force, I know that Brown
20 & Williamson has appointed a woman to a
21 similar job. I believe her appointment was
22 effected last November.
23 Q. Any of the other companies that
24 you are aware of?
25 A. Not to my knowledge.
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1 Levy
2 Q. Who first informed you that YSP
3 was going to be formed and that you were going
4 to be the head of it?
5 A. Mike Szymanczyk, who is our
6 president at Philip Morris U.S.A., offered me
7 the job.
8 Q. And was that the first time that
9 you had heard of YSP?
10 A. No, I had heard about YSP. I had
11 missed the staff meeting. The senior team
12 staff meeting. I don't remember why I missed
13 the meeting, but I did. I had heard about it
14 after the fact from Bob Mikulay. I heard that
15 the group was going to be formed and that a
16 woman named Rene Simons was going to be given
17 the job.
18 Q. Later on, Mr. Szymanczyk informed
19 you that you would be given the job of heading
20 up YSP?
21 A. Right. He came and basically
22 told me from his point of view the rationale
23 for having a youth smoking division department
24 and then he shared with me the sequence of
25 events that led to Rene not being available
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1 Levy
2 for the job and the decision that he would
3 rather go higher rather than lower to find
4 someone to fill the job. He wanted me to take
5 it.

6 Q. What did Mr. Szymanczyk tell you
7 what the rationale was for forming YSP?

8 A. Essentially, as I laid out to you
9 a few minutes ago, in terms of the youth
10 smoking incidents climbing, coupled with the
11 look-back provisions and also his personal
12 belief that because we are a marketer of an
13 adult product, that we need to take a more
14 proactive role in making sure that minors did
15 not use our product.

16 Q. Do you have a sense of, as far as
17 the timetable of your goal-setting process, as
18 far as reducing youth smoking, does it fit
19 with the goals outlined in the proposed
20 national resolution from June of 1997?

21 A. I haven't gotten that far. I'm a
22 little worried. I have to be honest with you.
23 I'm a little worried that whether Philip
24 Morris on its own can make the national needle
25 move.

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1 Levy
2 While that is my overall
3 objective, I have to be realistic. So part of
4 what I will set out to do, is make as big a
5 difference as we can make and try to validate
6 the fact that we are making a difference.

7 Q. I assume one of the purposes of
8 the formation of YSP is to avoid the look-back
9 penalties that would be imposed if the youth
10 smoking incidents does not decrease to the
11 prescribed levels; is that an accurate
12 statement?

13 A. I think the way I would say it is
14 look-back was certainly one of the factors
15 that led to the creation of my department.

16 If to the extent that we are
17 successful in bringing youth smoking incidents
18 down, that will help us avoid paying look-back
19 penalties. I'm kind of lost in my answer.
20 That is the way I would say it.

21 Clearly, there is a business
22 reason to try to bring youth smoking rates
23 down. It's the business reason is -- one
24 business reason is look-back.

25 Another business reason is that
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1 Levy
2 while we don't market to kids, a lot of people
3 believe we do. And a way to, I think, build
4 our credibility in this area is not only to
5 say we don't market to kids, but to
6 proactively support programs that are geared
7 to reduce youth smoking. Like Access, which
8 we have been doing. But get engaged in other

9 programs that are on face credible and in
10 fact, have been shown to be effective to
11 reduce youth smoking.
12 Q. What sort of timetable do you
13 envision for putting together a budget for
14 YSP?
15 A. I'm in the middle of doing that
16 right now.
17 Q. And I assume you will have a
18 budget for fiscal year 1999 prior to the end
19 of fiscal year 1998; is that an accurate
20 statement?
21 A. The way our budgeting process
22 works, we have what we call original budget
23 meetings with executive management of Philip
24 Morris Company, Inc. in December. And so the
25 preliminary original budget should get aired
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1 Levy
2 in December. Preliminary original budget for
3 '99 should get aired in December.
4 Q. Is this the first deposition in
5 which you have testified regarding YSP?
6 A. I think that I answered a few
7 questions on Youth Smoking Prevention in the
8 Engle deposition.
9 Q. By the way, we were wondering, do
10 you know how Engle is spelled?
11 A. E-N-G-L-E.
12 Q. When you were discussing with Mr.
13 Szymanczyk rationalizing YSP, did you discuss
14 whether Philip Morris' formation of this
15 department at this particular juncture in time
16 would be valuable from a public relations
17 standpoint in light of the ongoing litigation
18 against the tobacco companies?
19 A. As I recall the conversation, we
20 touched on the topic of public relations in
21 the following way. Mike said: "I don't want
22 anybody to think that this is just a public
23 relations effort."
24 Q. And did you say anything in
25 response to that?

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1 Levy
2 A. You know, I don't recall. But I
3 wouldn't have accepted the job if it had been
4 a public relations effort. More to the point,
5 they would not have asked me to take the job
6 if it was a public relations effort.
7 Q. You testified that you are not
8 certain whether Philip Morris' efforts via YSP
9 would be enough to move the national needle?
10 A. Uh-huh.
11 Q. But you do want to have a
12 department that is not only credible on its
13 face, but that its performance can be
14 determined to be credible.
15 How -- do you have any way yet
16 that you have envisioned of measuring the
17 effectiveness of YSP in light of the fact that

18 Philip Morris is one of several cigarette
19 companies out there in the marketplace?
20 A. Let me say a couple of things on
21 that point. And I will answer your question.
22 But the first conclusion that I
23 have reached, and I've been on this job six or
24 seven weeks, the first conclusion I have
25 reached, I think I knew this before, but I had
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1 Levy
2 not crystallized it until I did a little more
3 reading, this is a societal issue. It's a
4 cultural issue.
5 And even if each of the cigarette
6 companies were to create a job similar to mine
7 and put similar efforts behind it, I'm not
8 convinced that would be enough. Because I
9 think that parents, teachers, community
10 leaders, religious leaders, other
11 not-for-profit organizations have a role to
12 play in trying to address, not just youth
13 smoking, but other risky behaviors that youth
14 engage in.
15 So my belief that we can't do it
16 alone, isn't just that we, Philip Morris,
17 can't do it alone, it's also we, the cigarette
18 industry, can't do it alone.
19 But the thoughts -- here is where
20 I think my research background maybe will help
21 in this job. My thoughts are, that as we put
22 together programs, that we will make sure that
23 an evaluation of the program is a part of what
24 we support or what we implement ourselves.
25 That evaluation would look not
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1 Levy
2 only at behavior, which would be things like
3 smoking incidents, but it would also involve
4 attitudes. Because I'm pretty sure that the
5 early stages of behavior change will involve
6 some attitude changes for kids. That is where
7 my thinking is today.
8 Rather than give up on a program
9 because we haven't seen behavior change yet, I
10 might be inclined to keep supporting a program
11 if we are starting to see attitude shifts.
12 That really has developed as my thinking at
13 this point.
14 My thinking has developed far
15 enough to know that we have to measure what we
16 do. Because I want to know that what we are
17 doing is effective or not. So we can choose
18 how to spend our money and to the extent that
19 we can find things that are effective, I would
20 like to share them with other people.
21 Q. What documents, if any, are there
22 presently in existence that state what YSP is,
23 what its goals are, what its strategies and
24 methods are going to be?
25 Is there anything that has been,
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1 Levy
2 I realize that we are talking about seven
3 weeks, is there a booklet you have, or is
4 there a mission statement or anything in
5 existence along those lines?
6 A. I'm working on that as we speak.
7 MR. GORE: We had asked at some
8 point if we can get a copy of, I think
9 it was a press release or some type of
10 document. I'll renew that request.
11 MR. HOWARD: As I understand it,
12 and you can confirm it with the
13 witness, I don't know if there was
14 anything in addition, an internal
15 Philip Morris memorandum circulated
16 regarding the witness' appointment to
17 the position and creation of the
18 position.
19 We can take a short break and I
20 can see where that fax is. Because I
21 have renewed your request to receive
22 it. There was a problem with the fax.
23 MR. GORE: Okay. Do you want to
24 take a break at this time? I don't
25 have a whole lot more.

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1 Levy
2 MR. HOWARD: Then we ought to
3 take a brief break. It may not be
4 here, we may have to wait a few minutes
5 to get the fax.
6 MR. GORE: Let's do that.
7 THE VIDEOGRAPHER: This is the
8 video operator. We're off the record.
9 The time is now 5:45.
10 (Recess taken.)
11 THE VIDEOGRAPHER: We are back on
12 the record. The time is 5:57.
13 Q. Ms. Levy, very briefly off the
14 record, we were discussing some of the ideas
15 you had considered regarding I believe
16 strategies or methodologies that YSP might
17 employ.
18 And could you please continue or
19 actually start over where you were --
20 A. Sure.
21 Q. -- with that description?
22 A. I think probably the best way to
23 put it in context is based on my reading, and
24 I think it's fair to say that I'm very new on
25 this job and very low on my learning curve,
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1 Levy
2 but my approach is to try to read as much as I
3 can to get a feel for what learning is out
4 there rather than approach this as if nothing
5 is known. Because there is a literature on
6 youth smoking and there is literature on Youth
7 Smoking Prevention.
8 The conclusion that I reached so

9 far is that teenage smoking is not a
10 unidimensional kind of event. Teenage smoking
11 tends to cluster with other risky behaviors
12 like drinking, like teenage sexual activity,
13 teen violence, illegal drug use.

14 So that when you understand that
15 smoking tends to be associated with these
16 other activities, it leads researchers that I
17 have read to, start thinking about what are
18 the underlying root causes of these risky
19 behaviors and what can possibly be done to
20 address these issues.

21 One of the things we started
22 talking about off the record was the fact that
23 there is a segment of youth that is called
24 youth at risk. There are a lot of different
25 definitions of youth at risk, probably the

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1 Levy
2 easiest one is socioeconomic definition.

3 And I believe the data suggested
4 that about one in five kids, not necessarily
5 youth, but kids lives below the poverty line,
6 and that would tend to get them into the
7 classification once they were youth, of being
8 at risk.

9 There are other definitions that
10 include having both parents working or being a
11 single parent family. Having a parent who has
12 a drug problem, what have you.

13 But the concept of it being a
14 youth at risk leads you -- in fact, if you
15 were a youth at risk by any of these
16 definitions, leads you to be more likely to
17 engage in this cluster of activities, smoking,
18 drinking, illegal drug use, teenage sex, teen
19 violence.

20 So I think part of the issue is
21 how do you provide support and positive
22 choices for kids that are finding themselves
23 in these circumstances.

24 And so while this is a very large
25 problem, it certainly is that -- I don't

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1 Levy
2 believe every kid that smokes cigarettes is a
3 kid that is at risk. I think there is a
4 significant number of kids who are smoking
5 cigarettes who are at risk.

6 And so one of the angles that we
7 are looking at, how can we help kids at risk.
8 And it would be not just in terms of helping
9 to educate them about the risk involved with
10 smoking, which is being done pretty
11 effectively in our public school systems, but
12 also helping to build their self-esteem, which
13 I don't think is being done as effectively in
14 schools.

15 Help them resist peer pressure
16 because peer pressure has been shown to be a
17 really primary factor in kids smoking. And so

18 how to resist peer pressure it seems to me is
19 something I would want kids to learn.
20 Also teaching kids how to make a
21 good decision so that they understand that at
22 the end of the day, kids, particularly once
23 they reach their teenage years, know they have
24 a lot of freedom, and so preaching to them and
25 telling them no, really is like making
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1 Levy
2 something more attractive to them. Because
3 the thing that you are telling them not to do
4 is the thing that they want to do.
5 So my thinking is that there has
6 to be a better way and a better way is to
7 acknowledge the fact, that they do make
8 choices. They have the power to make choices
9 and what they need to do is learn how to make
10 better choices.
11 How do you translate that into
12 specific programs and specific actions is what
13 we are trying to figure out now. But the
14 conceptual framework that I'm working within
15 right now is that this is a complex problem
16 that we need to attack, if we can, at the root
17 cause level. And we need to do it in a way
18 that will provide positive choices for these
19 kids.
20 Q. Is there going to be a document
21 or booklet, something prepared, that will
22 state the goals, objectives, strategies,
23 methodologies that are going to be employed by
24 YSP?
25 A. It's hard for me to say at the
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1 Levy
2 moment what form any of my documents will
3 take. Philip Morris doesn't tend to be a
4 booklet kind of organization. I suspect that
5 what we will have will be some presentations,
6 probably have some strategy documents.
7 It's too early to say exactly
8 what formal all of this will take. But as we
9 begin to either support programs or get
10 involved in the design of programs, my guess
11 is, that there will be some documents
12 explaining the rationale and scope of those
13 programs.
14 Q. Is any of this, the formation of
15 YSP or what it's going to be doing or the
16 budget, is it considered proprietary or is
17 this going to be -- this information is going
18 to be generally available to the public?
19 A. You know, I don't know the answer
20 to that. I don't know.
21 Q. Whatever becomes available, we
22 have -- presently have trial dates in these
23 two days, sometime next year, and we will be
24 asking for whatever becomes available with
25 respect to YSP.
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1 Levy

2 During the intervening time
3 period, I was trying to anticipate what
4 approach the company was going to take as to
5 whether that information will be made
6 available.

7 Are you familiar with studies
8 that indicate that a majority of adult smokers
9 start smoking before they turn 18?

10 A. The statement that I'm aware of
11 is very similar to the one that you just made,
12 with the exception of the word "before." I
13 believe what I recall is by the age of 18.

14 I think the statement that I'm
15 familiar with says that 90 percent of adult
16 smokers today started smoking by the time they
17 were 18.

18 Q. By the time of their 18th
19 birthday?

20 A. Roughly.

21 Q. Those smokers -- I'll call
22 them -- there is no legal implication in my
23 calling them underage smokers, but I need a
24 name to call them, smokers who smoke before
25 their 18th birthday occurs, those will be --

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1 Levy

2 or some of those will be, the target audience
3 for YSP; will they not?

4 A. The way I'm thinking about the
5 audience that we want to address with our
6 programs is right now, I'm thinking about the
7 kids that are in the age range roughly, 9 to
8 13 or 14.

9 Because at the moment, and again,
10 I reserve the right to change my opinion as I
11 get smarter about this stuff, six or seven
12 weeks in a job, my belief is that what we want
13 to do is try to develop programs that will
14 help kids never start smoking.

15 So get them -- I forget what the
16 exact date is, in terms of -- for people who
17 started smoking by the age they were 18, I
18 think the most common age they started is 13
19 or 14.

20 So what I'm saying is, okay,
21 let's try to get these kids, if we can develop
22 programs that will get these kids before that
23 age and try to influence their self-esteem and
24 their ability to resist peer pressure and
25 their decision-making skills.

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2 Then, when they get faced with
3 peer pressure to try cigarettes or peer
4 pressure to try alcohol or drugs, they will
5 have the ability to resist that and they will
6 never start.

7 So my belief right now is our
8 effort will be directed more to the folks in

9 that age range, 9 to 13-ish rather than trying
10 to -- with the programs that we are newly
11 developing, clearly, our Access programs are
12 geared to prevent kids from buying cigarettes
13 illegally. Okay?

14 And so at the moment, that is the
15 thrust of our effort, to address the folks
16 that you were talking about. The ones that
17 might be underage smokers, if you will, cut
18 off the supply.

19 Q. Is the formation of YSP the first
20 time in which Philip Morris has gone beyond
21 cutting off access, denying sales to underage
22 smokers, and refraining from targeting its
23 advertising and marketing efforts to underage
24 smokers, to actually trying to discourage
25 people under the age of 18 from engaging in

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1 Levy
2 what you have described as a variety of risky
3 behavior, including smoking?

4 A. Not really. I'm trying to
5 remember the exact program, and forgive me, I
6 can't remember the exact name of what was
7 done.

8 But as I recall, there was an
9 industry effort where we participated that the
10 target there was parents. And the effort was
11 to try to help parents do a better job of
12 talking to their kids about cigarettes and
13 smoking. If I'm not mistaken, I believe that
14 effort was put into place in the late '80s.

15 But other than that effort, I'm
16 not aware of any efforts that are of the type
17 and scope that I'm talking about here today.

18 Q. Do you recall the name of that
19 late '80s effort?

20 A. It's almost like -- I can almost
21 see it in my mind's eye, but it's something
22 like, helping youths say no or something like
23 that.

24 MR. GORE: I would like to mark
25 as Exhibit 3 to the deposition the
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1 Levy
2 long-awaited organization announcement,
3 which I'm sure you are familiar with,
4 regarding the formation of Youth
5 Smoking Prevention and your appointment
6 as senior vice president of Youth
7 Smoking Prevention.

8 The organizational announcement
9 states that you will report directly to
10 Mr. Szymanczyk.

11 (One page document dated April
12 29, 1998 regarding the formation
13 of Youth Smoking Prevention
14 marked as Levy Exhibit 3 for
15 identification as of this date.)

16 Q. You have seen this document
17 before?

18 A. Yes.
19 Q. This is the document that was
20 circulated at Philip Morris to announce YSP
21 and your promotion as vice president of YSP;
22 is that correct?
23 A. It wasn't a promotion. It was an
24 appointment.
25 Q. This is a hypothetical question:
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1 Levy
2 If it's true that 90 percent of
3 adult smokers starts smoking before their 18th
4 birthday, in your efforts to discourage those
5 underage smokers from starting smoking, I
6 believe the words you used were, your efforts
7 will be to get to them between the agings of 9
8 and 13 so that they will never start, if your
9 efforts are successful, if other efforts by
10 other companies like yours are successful,
11 what happens to your customer base?

12 MR. HOWARD: I'll object to the
13 form. Go ahead.

14 A. Let me break the down into two
15 pieces. And you correctly summarized what I
16 had said.

17 The first thing that I think that
18 is critical to understand is that, my job
19 strictly deals with youth and it deals with
20 kids under the age of 18. So my goal is that
21 they're kids and they are under age, they will
22 never smoke. That is my goal. Now --

23 Q. May I interrupt? I apologize.
24 When you say never, do you mean
25 never until they turn 18 or do you mean never
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1 Levy
2 ever?

3 A. I mean never until they are
4 adults and then can make a free choice to
5 smoke. So that is clarified.

6 Now, as I understand your
7 question, maybe we can read back the question,
8 there was a second part after we get past the
9 never.

10 MR. GORE: Can you read it back?
11 (Record read.)

12 A. As I understand your question,
13 the question is what happens when folks turn
14 18 or become of legal age, in Alabama and
15 Utah, they are 19.

16 Q. And they haven't started smoking?

17 A. And they haven't starting
18 smoking. I don't know the answer.

19 But I think it would be fair to
20 say, that it's highly likely that fewer of
21 them will start smoking after their 18th
22 birthday. If that is the result of the
23 success of my efforts and other people's
24 efforts in this regard, then so be it.

25 Q. I applaud your viewpoint on that
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1 Levy

2 issue.

3 Is that viewpoint shared by
4 others at Philip Morris and, to your
5 knowledge, whose success and career progress,
6 incomes, and lifestyle to a very great extent
7 and considerable testimony from -- over the
8 last two days about very sophisticated and
9 expensive efforts to increase market share
10 rather than decrease market share, how -- what
11 sort of reception have you received over the
12 last seven weeks to this what seems to be a
13 very new idea in terms of the -- in terms of
14 the tobacco business?

15 MR. HOWARD: Objection to form.

16 You can answer.

17 A. I think there are really two
18 answers to that question. The first answer is
19 very short. That is, when Mike Szymanczyk and
20 I were talking about this job and he was
21 telling me that he wanted me to take the job,
22 we discussed the possibility that the size of
23 the market could shrink if we were effective
24 in the Youth Smoking Prevention efforts, we
25 both looked each other in the eye and said:

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2 "That is okay."

3 Now, going beyond that, in terms
4 of trying to put in context how can I have
5 that kind of attitude, we have been dealing in
6 a market that has been declining since 1981.
7 Market peaked in 1981. It's been declining
8 consistently since then.

9 I think the efforts that you
10 would have heard about from our marketing
11 people are geared toward a market share
12 strategy because we are in a declining market.
13 So it's a shared game. And I would expect
14 that we would continued to play that market
15 shared game and that is regardless of the size
16 of the industry, we want to make sure that our
17 share of that pie, whatever its size,
18 continues to grow.

19 And that is why we work so hard
20 in building brand equity, we worked so hard to
21 convince our smokers to smoke our brands and
22 to continue smoking our brands.

23 So there is nothing logically
24 inconsistent with what I have said,
25 potentially, there is a matter of degree. But

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1 Levy

2 we don't know.

3 Q. Do you know whether -- strike
4 that.

5 Was the formation of YSP, was
6 that Mr. Szymanczyk's idea?

7 A. I don't know the answer to that
8 question.

9 Q. Do you know who came up with the
10 entire concept?

11 A. What I know is that Mike
12 Szymanczyk had some involvement in the
13 creation of the department.

14 Who came up with the idea
15 originally? I don't know whether it was Mike.
16 I know Ellen Merlo had some involvement in the
17 thought process. I don't know who else.

18 Q. Do you know whether Mr. Bible was
19 involved in the conception or creation of YSP?

20 A. I don't know. I can only assume
21 that he -- as with anything at my level, he
22 would have had to approve it. I don't know
23 whether he was involved with the creation.

24 Q. Have you had any communication
25 with Mr. Bible, regarding the creation, goals,
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1 Levy
2 strategies or any other aspect of YSP since
3 your appointment?

4 A. Not directly, no.

5 Q. Indirectly?

6 A. Indirectly in the sense that he
7 made a presentation to the employees at 120
8 Park a few weeks ago and touched upon the
9 topic of my new job and set out -- I can't
10 remember the specifics, but basically set out
11 in my mind and a number of employees' mind
12 some fairly ambitious expectations for my job
13 and my department's role. So I think his
14 expectations are quite high.

15 Q. Can you specifically recall what
16 some of those expectations were?

17 A. Not -- again, not specifically,
18 because it was in the context of the whole
19 series of remarks about our business and what
20 was going on in the external environment.

21 But comments along the line of
22 the fact that the Youth Smoking Prevention
23 Department had been created, that I was put in
24 charge of it, that he was confident that I and
25 my team would come up with some creative new
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1 Levy
2 ideas for addressing this issue.

3 Q. Have you received any negative
4 comments from anyone, either internally at
5 Philip Morris or from other tobacco companies,
6 regarding the creation or goals of YSP?

7 A. No.

8 MR. GORE: I have nothing
9 further.

10 MR. HOWARD: I have one follow-up
11 question and I can sit here and ask it.

12 EXAMINATION BY MR. HOWARD:

13 Q. During your testimony a few
14 minutes ago, Ms. Levy, you reconciling your
15 new job description and the goals of that job
16 with the discussion we had with Mr. Mikulay
17 the last couple of days of marketing efforts

18 of Philip Morris to increase market share, and
19 as you mentioned, I believe, the market share
20 being the game in the declining market.

21 Do you recall that?

22 A. Yes, I did.

23 Q. Precisely what is the market in
24 which Philip Morris competes for market share?

25 A. The -- well, market that Philip
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1 Levy
2 Morris U.S.A. competes in, is the domestic
3 cigarette market. And it is the market, as we
4 define it, that is composed of adult smokers,
5 aged 18 plus.

6 As I mentioned, there are two
7 states where you have to be 19 to legally buy
8 cigarettes. In those states, it's age 19
9 plus. That is the market as we define it.
10 It's an adult -- a domestic adult environment
11 aged 18 plus with the exception of two states
12 where you have to be 19.

13 MR. HOWARD: Very well.

14 MR. GORE: That suggests one
15 brief follow up.

16 FURTHER EXAMINATION

17 BY MR. GORE:

18 Q. When you say there is a declining
19 market and you have just defined what the
20 market is, is it declining because of age
21 demographics or fewer numbers of people in
22 that market or is it declining for other
23 reasons, such as fewer people are starting to
24 smoke.

25 What do you mean when you say
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1 Levy
2 it's been declining since 1980?

3 A. '81.

4 Q. Sorry.

5 A. 1981.

6 Q. Are there multiple reasons for
7 why the market is considered to be a declining
8 market?

9 A. The simplest answer is that it's
10 declining because the sum total of all the
11 company's shipment is declining, but then that
12 leads you to say why is that. And smoking
13 incidents among adults is declining.

14 What that means is that the
15 percent of adults who report that they are
16 smokers is declining. The number of
17 cigarettes smoked per day, by adult smokers is
18 declining slowly. Slightly. But it is
19 declining.

20 And those are the reasons. Once
21 you know incidents and you know consumption,
22 you basically have the size of the market.

23 MR. GORE: Thank you, Ms. Levy.

24 MR. HOWARD: We're concluded.

25 THE VIDEOGRAPHER: This is the
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1 Levy
2 conclusion of the deposition of Carolyn
3 J. Levy. The time is 6:24 on June 23,
4 1998.

5 (Time noted: 6:24 P.M.)

6 I declare under penalty of
7 perjury that the foregoing
8 is true and correct.

9 Subscribed on this _____
10 day of _____ 1998.

11 _____
12 _____
13 Carolyn J. Levy

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C E R T I F I C A T E

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3

4 STATE OF NEW YORK)
5) ss.:
6 COUNTY OF NEW YORK)

7

8 I, ARTA PASCULLO, a Registered
9 Professional Reporter and Notary Public
10 within and for the State of New York, do
11 hereby certify:

12

13 That I reported the proceedings in
14 the within-entitled matter, and that the
15 within transcript is a true record of
16 such proceedings.

17

18 I further certify that I am not
related, by blood or marriage, to any of
the parties in this matter and that I am
in no way interested in the outcome of
this matter.

19

19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this__30th__day of__June__,
21 _____
22 1998.
23

24 ARTA PASCULLO, RPR
25

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1
2 June 23, 1998

3 I N D E X

4 WITNESS PAGE

5 CAROLYN J. LEVY

6 Examination by Mr. Gore 8

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8 E X H I B I T S

9 LEVY

10 FOR_IDENTIFICATION PAGE

11 1 Document entitled "Notice of
12 Deposition of Philip Morris,
13 Inc." in Superior Court of
14 the State of California 10

15 2 Document entitled "Notice of
16 Deposition of Philip Morris,
17 Inc." in the Commonwealth of
18 Massachusetts 10

19 3 One page document dated
20 April 29, 1998 regarding
21 the formation of
22 Youth Smoking Prevention 70

23 REQUESTS_FOR_DOCUMENTS

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